

GRAY & BECKER  
ATTORNEYS AT LAW  
900 WEST AVENUE  
AUSTIN, TEXAS 78701-2210  
(512) 482-0061  
TELECOPIER (512) 482-0924

April 11, 2012

The Honorable John K. Dietz  
Travis County District Court  
Travis County Courthouse  
1000 Guadalupe, 3rd Floor  
Austin, Texas 78701

*Via Hand Delivery*

Re: Cause No. D-1-GN-11-003130, *The Texas Taxpayer & Student Fairness Coalition, et al. v. Robert Scott, Commissioner of Education, et al.*, in the 200<sup>th</sup> Judicial District Court of Travis County, Texas

Dear Judge Dietz:

This letter responds to the letter sent to the Court by J. Christopher Diamond, attorney for Intervenor, and filed on the evening of April 10, 2012.

During the pretrial hearing on March 28, 2012, you orally granted the Agreed and Unopposed Motion to Consolidate for Filing Purposes, Discovery and Trial which we had filed on March 27, 2012. That Motion contained the following provision:

12. If the Court denies any motion for summary judgment or a plea to the jurisdiction to any of the claims of any of the parties, including intervenors, filed by the State Defendants, and that denial is subject to an interlocutory appeal and stay pursuant to Tex. Civ. Prac. & Rem. Code section 51.014(a)(8) or any other law, should the State Defendants appeal, the challenged claim shall be severed from the remaining claims, and the State Defendants and other parties unequivocally agree they will not seek to stay the consolidated proceedings, including discovery and trial.

Prior to filing this Motion with the Court, I sent an email to Mr. Diamond on March 26, 2012, with the Motion attached indicating my intent to file the Motion the next day. Exhibit 1. The Motion sent to Mr. Diamond contained the following provision:

12. The parties agree that in the event State Defendants file a motion for summary judgment or a plea to the jurisdiction to any of the claims of any of the

parties and that claim is subject to an interlocutory appeal and stay pursuant [sic] This motion is not intended to preclude the parties from severing any issue or one of the cases if it becomes subject to an interlocutory appeal pursuant to Tex. Civ. Prac. & Rem Code § 51.014(a)(8) or any other law, that challenged claim shall be severed from the remaining claims and State Defendants and the other parties agree to waive unequivocally their rights and privilege to have the consolidated proceeding, including but not limited to discovery and trial, stayed for any purpose.

Mr. Diamond did not raise any issue with the Motion. Mr. Hinojosa requested the change in language from the first version, which was sent to Mr. Diamond, to the filed version. My secretary sent out the file stamped copy to the parties, and I did not notice that Mr. Diamond was not on the email list.

After your ruling on March 28, 2012, I presented you with an order on April 1, 2012, Order Granting Agreed and Unopposed Motion to Consolidate for Filing Purposes, Discovery and Trial, which you signed on April 2, 2012. That Order contained the following language:

Further, it is understood that if the Court denies any motion for summary judgment or a plea to the jurisdiction to any of the claims of any of the parties, including intervenors, filed by the State Defendants, and that denial is subject to an interlocutory appeal and stay pursuant to Tex. Civ. Prac. & Rem. Code section 51.014(a)(8) or any other law, should the State Defendants appeal, the challenged claim shall be severed from the remaining claims, and the State Defendants and other parties unequivocally agree they will not seek to stay the consolidated proceedings, including discovery and trial.

This Order showed agreement by the attorneys for the Calhoun County I.S.D. parties, the Edgewood I.S.D. parties, and the Fort Bend I.S.D. parties, but not the Intervenor.

Rule 61 of Tex. Civ. P. indicates that the civil rules "shall apply equally, so far as it may be possible, to intervenors and to parties ..." I was not as diligent as I should have been in copying the intervenors because I considered the matter of consolidation a matter between the parties on which the intervenors had no say.

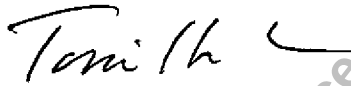
I think it is unnecessary to have a hearing on this matter and would be a waste of judicial resources.<sup>1</sup> I think Mr. Diamond's problem could be solved if you entered an Order clarifying the April 2<sup>nd</sup> Order which says that the April 2, 2012 Order does not preclude Intervenor from opposing severance, if and when the issue of severance is raised. In the future, I will be more careful in assuring consultation with and service on all parties.

---

<sup>1</sup> The parties are still hopeful that they will present you with an Agreed Proposed Scheduling Order which would make a pre-trial hearing on April 16, 2012 unnecessary.

Yours truly,

Gray & Becker, P.C.



Toni Hunter

**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 11, 2012, a true and correct copy of the foregoing was served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure and the Texas Local Rules:

Mark R. Trachtenberg  
HAYNES AND BOONE, LLP  
1 Houston Center  
1221 McKinney St., Suite 2100  
Houston, Texas 77010

John W. Turner  
HAYES AND BOONE, LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219

*Attorneys for Plaintiffs, Calhoun County ISD, et al.*

David G. Hinojosa  
Marisa Bono  
MEXICAN AMERICAN LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC.  
110 Broadway, Suite 300  
San Antonio, Texas 78205

Roger L. Rice  
MULTICULTURAL, EDUCATION, TRAINING AND  
ADVOCACY, INC.  
240A Elm st., suite 22  
Somerville, MA 02144

*Attorneys for Plaintiffs, Edgewood ISD, et al.*

The Honorable John K. Dietz

April 11, 2012

Page 4

J. David Thompson, III  
Philip Fraissinet  
THOMPSON & HORTON, LLP  
Phoenix Tower, Suite 2000  
3200 Southwest Freeway  
Houston, Texas 77027

***Attorneys for Plaintiffs, Fort Bend ISD***


J. Christopher Diamond  
The Diamond Law Firm, P.C.  
17484 Northwest Freeway  
Suite 150  
Houston, Texas 77040

Craig T. Enoch  
Melissa A. Lorber  
Enoch Kever PLLC  
600 Congress, Suite 2800  
Austin, Texas 78701

***Attorneys for the Efficiency Intervenors***

Shelley N. Dahlberg  
Assistant Attorney General  
Texas Attorney General's Office  
General Litigation Division  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711

***Attorneys for Defendants***



---

Toni Hunter

## Toni Hunter

---

**From:** Toni Hunter  
**Sent:** Monday, March 26, 2012 4:10 PM  
**To:** 'christopherdiamond@yahoo.com'  
**Subject:** Motion to Consolidate  
**Attachments:** Agreed Motion to Consolidate.docx

FYI

I am waiting for the State Defendants to sign off. I anticipate filing it tomorrow.

Toni Hunter

**GRAY & BECKER, P.C.**  
ATTORNEYS AT LAW

900 West Ave  
Austin, TX 78701  
P 512.482.0061  
F 512.482.0924  
[toni.hunter@graybecker.com](mailto:toni.hunter@graybecker.com)  
[www.graybecker.com](http://www.graybecker.com)

---

This e-mail transmission, and any documents, files or previous e-mail messages attached to it, may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this message is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply e-mail or by telephone (512) 482-0061, and destroy the original transmission and its attachments without reading or saving them to disk. Thank you!

---



Save a tree. Don't print this email unless it's necessary.



THE TEXAS TAXPAYER & STUDENT  
FAIRNESS COALITION; ALIEF I.S.D.,  
CANUTILLO I.S.D., ELGIN I.S.D.,  
GREENVILLE I.S.D.,  
HILLSBORO, I.S.D., HUTTO I.S.D.,  
LAKE WORTH I.S.D., LITTLE ELM I.S.D.,  
NACOGDOCHES I.S.D.,  
PARIS I.S.D., PFLUGERVILLE I.S.D.,  
QUINLAN I.S.D., SAN ANTONIO I.S.D.,  
STAMFORD I.S.D., TAYLOR I.S.D.,  
VAN I.S.D.; RANDY PITTENGER;  
CHIP LANGSTON; NORMAN BAKER;  
BRAD KING; and SHELBY DAVIDSON,  
as Next Friend of CORTLAND,  
CARLI AND CASI DAVIDSON,

Plaintiffs

vs.

ROBERT SCOTT, COMMISSIONER  
OF EDUCATION, IN HIS OFFICIAL  
CAPACITY; SUSAN COMBS,  
TEXAS COMPTROLLER OF PUBLIC  
ACCOUNTS, IN HER OFFICIAL  
CAPACITY; TEXAS STATE BOARD  
OF EDUCATION,

Defendants.

IN THE DISTRICT COURT

200<sup>TH</sup> JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**AGREED AND UNOPPOSED MOTION TO CONSOLIDATE FOR FILING PURPOSES,**

**DISCOVERY, AND TRIAL**

Plaintiffs in this case, THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, et al., and the plaintiffs in CALHOUN COUNTY I.S.D., et al., EDGEWOOD I.S.D., et al., and FORT BEND I.S.D., et al., whose cause numbers are listed below and pursuant to TRCP 40 make this Agreed Motion to Consolidate Cause Nos. D-1-GV-11-001917, D-1-GV-11-001972, and D-1-GV-11-002028 with this case. Plaintiffs would show as follows:

1. On October 10, 2011, Plaintiffs, The Texas Taxpayer & Student Coalition, et al. filed suit challenging the constitutionality of the Texas public school finance system. That suit is Cause No. D-1-GN-11-003130. This suit alleges that the Texas public school finance system violates art. VII § 1 of the Texas Constitution because it is inefficient in that school districts do not have substantially equal access to necessary funds to provide a general diffusion of knowledge to their students; because it is unsuitable for its purpose; because it is inadequately funded; because taxpayers who are willing to shoulder similar tax burdens do not have access to similar revenues for education; and because it fails to provide equal protection to students in low wealth districts. Additionally, these Plaintiffs allege that the system is in violation of art. VIII, § 1-e of the Texas Constitution because it imposes a state ad valorem tax. The Texas Taxpayer and Student Coalition represents 407 school districts, educating 1.3 million students, several property owners who pay taxes to support the public school finance system and several school age children appearing through their parents as next friend.

2. Calhoun County, I.S.D., et al. filed their suit in Travis County district court on December 9, 2011. That suit is Cause No. D-1-GV-11-001917. The Calhoun County suit alleges that the Texas school finance system violates art. VII, section 1 of the Texas Constitution because it does not make sufficient funds available to districts to provide a general diffusion of knowledge. It also alleges that districts do not have meaningful discretion to set their property taxes at a level that allows local enrichment, and therefore the taxing system has become a state ad valorem tax in violation of art. VIII, § 1-e of the Texas Constitution.

3. Edgewood I.S.D., et al. filed their suit on December 13, 2011, in Travis County District Court. Their suit is Cause No. D-1-GV-11-001972. The Edgewood plaintiffs also challenge the constitutionality of the Texas public school finance system. More specifically, the Edgewood Plaintiffs allege that the public school finance system violates the Texas Constitution's efficiency provision because the gap in funding and tax rates required to provide a

general diffusion of knowledge between low wealth school districts, including Plaintiff districts and those districts in which individual Plaintiffs reside, and high wealth school districts, and because it arbitrarily and inadequately funds a general diffusion of knowledge for low income and English language learners. The Edgewood Plaintiffs also alleges that the insufficient funding for lower-wealth school districts has stripped Plaintiff school districts from exercising meaningful local control, forcing them to make unnecessary cuts to their education program and tax at or near the \$1.17 cap simply to satisfy State mandates thereby constituting an unconstitutional state *ad valorem* tax under art. VIII of the Texas Constitution. The Edgewood Plaintiffs further request a declaration that, insofar as Defendants continue to rely on disparate property values and accompanying taxes to fund public schools, equalization provisions such as recapture and a cap on maximum tax rates, remain essential for an efficient public school system under Art. VII, § 1 of the Texas Constitution.

4. The Edgewood plaintiffs include five school districts educating more than 60,000 students and four parents who pay property taxes and whose minor children attend or will attend the Pasadena I.S.D. or Amarillo I.S.D.

5. Fort Bend I.S.D., et al. filed their Original Petition on December 22, 2011, in Travis County District Court under Cause No. D-1-GV-11-002028. The Fort Bend I.S.D. suit alleges that the Texas public school finance system is unconstitutional because it does not provide sufficient funding to allow school districts to meet increasing state standards and mandates and is therefore inadequate and unsuitable and fails to provide for a general diffusion of knowledge; because the dual system of “target revenue” and formula-based funding arbitrarily funds districts at different levels and is therefore inefficient and arbitrary; because the combination of underfunding, increasing standards, and the statutory cap on M&O tax rates prevents districts from exercising “meaningful discretion” in setting their tax rates thereby



creating a state ad valorem tax. The Fort Bend I.S.D. suit includes 79 districts educating 1.8 million Texas children.

6. Robert Scott, Texas Commissioner of Education, Susan Coombs, Texas Comptroller of Public Accounts and the Texas State Board of Education are defendants in all the above-mentioned suits. All defendants are represented by the Texas Attorney General.

7. The suits involve common issues of law and fact and relate substantially to the same subject matter. Similar evidence will be material, relevant and admissible in all suits.

8. Unless the State defendants file a plea to the jurisdiction as to the claims of any party and take an interlocutory appeal if they lose their plea, no party will be prejudiced as a result of consolidation. On the contrary, consolidation will result in judicial economy and uniform results for all parties.

9. State defendants will be able to more effectively and economically defend against the claims of unconstitutionality against the Texas public school finance system if all the claims are in one suit as opposed to four suits. At a meeting of the parties on March 2, 2012, Assistant Attorney General Robert O'Keefe indicated that the State defendant's agreed with consolidation.

10. This suit was the first filed.

11. The parties wish to consolidate these cases for filing purposes, discovery, trial and judgment. Within the consolidated case, each party wishes to maintain its identity and control of its case. The parties do not intend for this motion or this requested consolidation to be construed as limiting the right of any party to present evidence or examine witnesses relevant to any issue in the consolidated cases.

12. The parties agree that in the event State Defendants file a motion for summary judgment or a plea to the jurisdiction to any of the claims of any of the parties and that claim is subject to an interlocutory appeal and stay pursuant This motion is not intended to preclude the parties from severing any issue or one of the cases if it becomes subject to an interlocutory

appeal pursuant to Tex. Civ. Prac. & Rem Code § 51.014(a)(8) or any other law, that challenged claim shall be severed from the remaining claims and State Defendants and the other parties agree to waive unequivocally their rights and privilege to have the consolidated proceeding, including but not limited to discovery and trial, stayed for any purpose.

13. This motion further does not constitute any of the above-named plaintiffs' waiver to challenge the present or future intervention of any party into any of the aforementioned lawsuits.

WHEREFORE, premises considered, Plaintiffs, the Texas Taxpayer and Student Coalition, et al. move that *Calhoun County I.S.D., et al. v. Robert Scott, et al.*, Cause No. D-1-GV-11-001917 in the 419<sup>th</sup> Judicial District of Travis County; that *Edgewood I.S.D., et al. v. Robert Scott, et al.*, Cause No. D-1-GV-11-001972, in the 345<sup>th</sup> Judicial District of Travis County; and that *Fort Bend I.S.D., et al. v. Robert Scott, et al.*, Cause No. D-1-GV-11-002028 in the 200<sup>th</sup> Judicial District of Travis County be consolidated with this cause of action, under this caption and cause number for filing purposes, discovery, and trial.

Respectfully submitted,

GRAY & BECKER, P.C.  
900 West Ave.  
Austin, Texas 78701  
Telephone: (512) 482-0061  
Fax: (512) 482-0924

By: \_\_\_\_\_  
Richard E. Gray, III  
State Bar No. 08328300  
Toni Hunter  
State Bar No. 10295900

Randall B. Wood  
State Bar No. 21905000  
Doug W. Ray  
State Bar No. 16599200  
RAY & WOOD  
2700 Bee Caves Road #200  
Austin, Texas 78746

Telephone: (512) 328-8877  
Fax: (512) 328-1156

ATTORNEYS FOR PLAINTIFFS,  
THE TEXAS TAXPAYER AND STUDENT  
COALITION, et al.

AGREED AS TO FORM & SUBSTANCE:

HAYNES AND BOONE, LLP  
1 Houston Center  
1221 McKinney St., Suite 2100  
Houston, Texas 77010  
Telephone: (713) 547-2000  
Fax: (713) 547-2600

By: \_\_\_\_\_  
Mark R. Trachtenberg  
State Bar No. 24008169

John W. Turner  
State Bar No. 24028085

HAYES AND BOONE, LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219  
Telephone: (214) 651-5000  
Fax: (214) 651-5940

*Attorneys for Plaintiffs, Calhoun County ISD, et al.*

MEXICAN AMERICAN LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC.  
110 Broadway, Suite 300  
San Antonio, Texas 78205  
Telephone: (210) 224-5476  
Fax: (210) 224-5382

By: \_\_\_\_\_  
David G. Hinojosa  
State Bar No. 24010689  
Marisa Bono  
State Bar No. 24052874

MULTICULTURAL, EDUCATION, TRAINING AND  
ADVOCACY, INC.  
Roger L. Rice  
240A Elm st., suite 22

Somerville, MA 02144  
Telephone: (617) 628-2226  
Fax: (617) 628-0322  
~~\*Pro Hac Vice application filed~~

***Attorneys for Plaintiffs, Edgewood ISD, et al.***

THOMPSON & HORTON, LLP  
Phoenix Tower, Suite 2000  
3200 Southwest Freeway  
Houston, Texas 77027  
Telephone: (713) 554-6767  
Fax: (713) 583- 9668

By: \_\_\_\_\_  
J. David Thompson, III  
State Bar No. 19950600  
Philip Fraissinet  
State Bar No. 00793749

***Attorneys for Plaintiffs, Fort Bend ISD***

#### **CERTIFICATE OF CONFERENCE**

On March 2, 2012, Toni Hunter, attorney for Plaintiffs, the Texas Taxpayer and Student Coalition, et al. conferred with representatives of the Texas Attorney General's office who indicated that Defendants do not oppose this motion.

\_\_\_\_\_  
Toni Hunter